

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation
by Florida Public Service
Commission of Alternative Local
Exchange Telecommunications
Certificate No. 7344 and
Interexchange Telecommunications
Certificate No. 7508 issued to
BroadBand Office Communications,
Inc., effective 5/9/01.

DOCKET NO. 010970-TP
ORDER NO. PSC-01-2182-PAA-TP
ISSUED: November 6, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CANCELLATION OF
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE AND
INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE DUE TO CHAPTER 11
BANKRUPTCY

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BroadBand Office Communications, Inc. (BroadBand) currently holds Alternative Local Exchange Telecommunications (ALEC) Certificate of Public Convenience and Necessity No. 7344, issued by the Commission on March 2, 2000, and Certificate of Public Convenience and Necessity No. 7508, authorizing the provision of Interexchange Telecommunications (IXC) service, issued by the Commission on July 18, 2000. The Division of the Commission Clerk and Administrative Services advised our staff by memorandum that BroadBand had not paid the 2000 Regulatory Assessment Fees (RAFs).

DOCUMENT NUMBER-DATE

14014 NOV-60

FPSC-COMMISSION CLERK

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Also accrued statutory penalties and interest charges for late RAFs payments for the year 2000 had not been paid. BroadBand was scheduled to remit its RAFs by January 30, 2001.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual RAF of \$50 if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161 (2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. All entities that apply for certification receive a copy of our rules governing ALEC and IXC services.

On June 14, 2001, the Commission received notice that BroadBand Communications, Inc. had filed for Chapter 11 bankruptcy protection on May 9, 2001. On July 16, 2001, the Commission received a letter dated July 13, 2001 from Ms. Tara K. Giunta and Elizabeth Holowinski, Counsel for the company, which requested cancellation of BroadBand's ALEC certificate due to the bankruptcy proceedings.

On July 30, 2001, staff called Ms. Holowinski, and explained that the company had an IXC Certificate in addition to its ALEC Certificate. Staff asked if the company wanted only the ALEC Certificate or both certificates cancelled. Ms. Holowinski advised that both certificates should be cancelled.

On August 1, 2001, staff received a letter from Coudert Brothers confirming that both the IXC and ALEC certificates should be cancelled. In addition, the letter stated that BroadBand does not have the financial resources to pay the regulatory assessment fees for the year 2001 and requested that the Commission waive the fees.

Chapter 11 of Section 109 of the Federal Bankruptcy Code provides for reorganization by business entities. The filing of a bankruptcy petition under Chapter 11 invokes an automatic injunction known as the Automatic Stay, Codified in Bankruptcy Code Section 362. Section 362(b)(5) provides that, for governments, the filing of the petition does not operate as a stay "of the enforcement of a judgment, other than a money judgment, obtained in an actual proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." (emphasis added)

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Thus, it would appear that we are not enjoined from exercising our police powers to protect public health, safety and welfare, but are enjoined from exercising our regulatory authority to collect a debt. However, in this case, the Company has requested cancellation of its certificate. Under those circumstances, we are free to do so. Accordingly, we find it appropriate to cancel ALEC Certificate No. 7344 and IXC Certificate No. 7508, effective May 9, 2001. In addition, the Division of Administration shall be notified that the past due RAFs should not be sent to the Comptroller's Office for collection, but that permission for the Commission to write off the uncollectible amount should be requested. We are vested with jurisdiction over this matter pursuant to Sections 364.336, 364.285, and 364.337, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BroadBand Office Communications, Inc.'s Alternative Local Exchange Telecommunications Certificate No. 7344 and Interexchange Telecommunications Certificate No. 7508 are hereby cancelled, effective May 9, 2001. It is further

ORDERED that the past due RAFs shall not be sent to the Comptroller's Office for collection and permission to write of the uncollectible amount shall be requested. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 6th Day
of November, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action

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proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 27, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.